

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SADAF N.,

Claimant,

Vs.

WESTSIDE REGIONAL CENTER,

Respondent.

OAH Case No. L 2007010037

DECISION

This matter was heard by Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings, in Culver City on February 21, 2007. Claimant was represented by her mother. Respondent Westside Regional Center was represented by Lisa Basiri, M.A., Fair Hearing Coordinator.

The Westside Regional Center presented documentary evidence (Exhs. 1 - 8). Claimant's mother reviewed the exhibits and decided not to present her exhibits because they were duplicative. Thereupon, claimant's mother and the regional center's fair hearing coordinator testified and were asked questions on cross-examination. The exhibits were admitted into evidence.

Oral and documentary evidence having been received, the Administrative Law Judge submits this matter for decision on February 21, 2007, and finds as follows:

ISSUE

The issue presented for decision is whether claimant should receive funding from Westside Regional Center for dance or movement therapy.

FACTUAL FINDINGS

1. Claimant is a thirteen year old girl who has been diagnosed with autism and moderate mental retardation. She also has a medical diagnosis of Attention Deficit Hyperactivity Disorder. Based on her disabilities and developmental delays, claimant is a client of Westside Regional Center (hereinafter also Service Agency). From the regional center, claimant receives the following services each month: 64 hours of specialized supervision for after school care, 54 hours of intensive behavioral intervention plus supervision of the therapists, and 28 hours of respite. In addition, claimant receives one and one-half hours of group training in social skills.

2. Claimant lives with her parents in the family home in Los Angeles. She attends and participates in a special day class at Orville Wright Middle School which is part of the Los Angeles Unified School District. She receives one hour weekly of both occupational therapy and speech therapy from the school district and the assistance of a one-to-one aide.

3. (A) In October 2006, the school district conducted a triennial, comprehensive assessment of claimant for occupational therapy (OT) services. Her mother expressed concerns with her daughter's self-help skills such as eating with utensils, changing clothes for adaptive physical education (PE), and toileting as well as writing letters. Her mother reported claimant was delayed in meeting most motor milestones. Claimant's teacher expressed concerns with her motor control and safe movement on the school campus and her fine motor skills. From the earlier annual Individualized Educational Plan of April 2006, the school district offered claimant one hour weekly of school-based OT and one hour weekly of therapy room OT but claimant was not using the offered therapy room services.

(B) The school occupational therapist found claimant demonstrated adequate active range of motion in all planes of movement but displayed some rigidity of tone during passive range of motion. She displayed functional muscle strength and sufficient endurance to sit upright but had decreased postural and equilibrium reactions when her balance was challenged and used compensatory techniques that caused her to have slow and labored movements. Claimant showed adequate fine motor skills, such as use of an appropriate grasp, as well as functional visual motor skills that allow her to access her educational program. She was able to complete many self-help skills needed for school. As for her areas of need, claimant presented with delays in sensory modulation in relation to grading body movements and sequencing praxis during self-help tasks. She had difficulty attending to non-preferred tasks and needed redirection and cues when the task became difficult or she lost interest. Claimant was also found to have difficulty using appropriate pressure of objects, sought out things to squeeze, and had difficulty dressing for adaptive PE. The school occupational therapist recommended OT services so that claimant could benefit from her instruction and assistive devices.

4. (A) In November 2006, the school district conducted a triennial psycho-educational assessment of claimant to evaluate her needs for special education services, to determine her present levels of functioning, and to develop appropriate educational recommendations. The school psychologist reviewed records and reports, observed and spoke with claimant, and administered tests.

(B) Claimant appeared to be in good health at the time of the psycho-educational assessment. When observed in her special day classroom, she was eager to perform tasks but had difficulty staying focused on tasks. Results from tests shows that her general ability to learn was delayed but she showed progress in receptive and expressive language. She showed a continuing need for adult assistance to help her in the classroom. Claimant's adaptive skills were low but were emerging slowly. She was able to gesture and to understand the meaning of "yes" or "no". She was still dependent on an adult to help with her daily living skills, which her mother reported were improving. In the area of socialization, claimant could play at least one interaction game with others. She demonstrated motor skills to climb on high-standing play equipment and to open and close scissors with one hand. Teachers reported claimant showed a significant deficit in attention and had a very difficult time staying focused on a task which appeared attributable to autism. Even though she cannot communicate verbally, claimant was personable and willing to please and showed progress in personal and academic areas.

(C) In summary, the school psychologist found that, due to autism, claimant's adaptive skills were still developing. Her socialization and communication skills were most severely affected by her disability. Claimant was found to continue to need adult assistance in the classroom.

5. (A) On February 6, 2006, the Westside Regional Center held a planning meeting attended by claimant, her service coordinator, and her mother. The service coordinator had observed claimant at her prior school. As a result of the planning meeting, the regional center issued an updated Individual Program Plan.

(B) With respect to current abilities, claimant is described as ambulatory with full use of her hands. She has good gross motor skills but she needs to develop her fine motor skills, such as her pencil grip. She has low muscle tone but can climb stairs by holding the handrail. She needs assistance with self-care and hygiene needs. In the cognitive area, claimant functions at the level of a three-year-old; she can understand two to three step directions and has an attention span of one to five minutes. In the communication area, claimant can make sounds, speak a few words, and use hand and body gestures or movements. She is not easily understood by those who do not know her.

(C) With respect to her education, claimant's mother said she was satisfied with the programming and level of services provided by the school district. In the social-emotional and recreational areas, claimant interacts largely with her family and

persons at school. Her mother reported that her daughter has no problems interacting with others but may inappropriately touch or smell them. Her mother indicated claimant may have a fixation or propensity to smell and touch people and things. Claimant occasionally wears pull-up diapers and has to be watched constantly because she has no awareness of safety and wanders away. Often, claimant is resistant to verbal instructions and will have a tantrum or tap her head with her fist due to frustration. She is not aware of her social setting, and will sometimes scream when out and about in the community. Claimant participates in intensive behavioral intervention to learn proper behaviors by positive reinforcement techniques.

6. Once a week for 90 minutes, claimant receives social skills training in a group setting at the Holding Hands Agency, a Los Angeles area vendor authorized by the Lanterman Regional Center to provide services in social skills training and music therapy to regional center clients. While at Holding Hands a few months ago, claimant's mother noticed a dance or movement therapy class attended by non-verbal and physically challenged youngsters. She then requested that the Service Agency provide or fund one hour music or dance therapy each week for claimant. Presently, claimant attends a gymnastics class once a week; the parents pay for the class.

7. On July 12, 2006, the Service Agency denied the mother's request for funding to purchase the music or dance therapy for her daughter. The Service Agency denied the request on the ground that funding for the therapy would have to be paid as respite and claimant or her family was already receiving 28 hours of in-home respite each month. The Service Agency determined that one hour weekly of music or dance therapy would cost approximately \$70, which was equivalent to 17 hours of respite per month. Respite was payable at \$8.83 per hour.

8. On or about December 19, 2006, claimant by her mother filed a fair hearing request to appeal the Service Agency's denial of her request for dance therapy. In the fair hearing request, the mother stated the Service Agency did not give a good reason to deny her request because respite and dance therapy are different services.

9. In this appeal, claimant's mother clarifies that she is requesting dance or movement therapy for her daughter and not music therapy. She provides several reasons in support of her request for dance therapy. First, she explains that her daughter is non-verbal, has low social skills, and does not move well. Dance therapy, the mother asserts, will help claimant to be aware of her own body and to develop her social skills. She contends that the dance therapy will also assist with claimant's sensory modulation issues. In other words, claimant's mother argues that dance therapy will benefit her daughter by aiding in the growth of her social-emotional and gross motor skills.

10. (A) The Service Agency does not contest or dispute that dance or movement therapy may be beneficial for claimant. Rather, the Service Agency contends that there is no scientific research or data that suggests dance therapy is an

effective treatment modality for claimant's particular developmental delays or difficulties.

(B) The Service Agency further explains that Holding Hands Agency is not an authorized vendor to provide dance or movement therapy to regional center clients. As such, the Service Agency is unable to contract with Holding Hands for this service. In order for claimant to receive dance therapy, the Service Agency would have to authorize the parent to be a vendor and then pay the parent directly through a parent vendor agreement or a purchase reimbursement arrangement.

11. As set forth in the website excerpts presented by the Service Agency (Exh. 8), dance or movement therapy has been defined by the American Dance Therapy Association as "the psychotherapeutic use of movement as a process which furthers the emotional, cognitive, and physical integration of the individual." It is said that dance therapy brings about changes in feelings, cognition, physical functioning, and behavior. The American Cancer Society has stated that dance therapy can be considered an expressive therapy but that there have been few scientific studies done to evaluate the effects of dance therapy on "health, prevention, and recovery from illness."

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Based on the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

LEGAL CONCLUSIONS

Grounds do not exist under the Lanterman Developmental Disabilities Services Act to grant claimant's request for dance therapy.

Under the Lanterman Developmental Disabilities Services Act, the Legislature has decreed that persons with developmental disabilities have a right to treatment and rehabilitative services and supports in the least restrictive environment and provided in the natural community settings as well as the right to choose their own program planning and implementation. (Welf. & Inst. Code, § 4502.) Welfare and Institutions Code sections 4640.7 and 4646, subdivision (a), provide that the delivery of services should be done in a cost-effective manner and section 4648, subdivision (a)(2), provides that services and supports must be individually tailored to the consumer or client.

The Legislature has further declared regional centers are to provide or secure family supports that, in part, respect and support the decision making authority of the family, are flexible and creative in meeting the unique and individual needs of the families as they evolve over time, and build on family strengths and natural supports. (Welf. & Inst. Code, § 4685, subd. (b).)

In addition, Welfare and Institutions Code section 4648, subdivision (a), provides that regional centers shall secure services and supports that meet the needs of the consumer as determined in the consumer's individual program plan and may purchase services or supports for a consumer which the regional center and consumer determine will best accomplish all or any part of the consumer's program plan. When selecting a provider of consumer's services and supports, the regional center is required to consider, in part, the provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's program plan and a provider's success in achieving the objectives set forth in the individual program plan.

Furthermore, dance therapy is not considered a health care service or occupational or physical therapy under the Service Standards of the Westside Regional Center. Dance therapy may be considered a form of respite service providing regularly scheduled non-medical care and supervision of a developmentally disabled minor under the Service Agency's Respite Guidelines. These guidelines further provide that participation in a social, recreational, or educational program can be used as an alternative form of respite care. The guidelines add that the need for care and supervision that can be met by a program must be balanced with the expected outcome of the program activities and with the cost effectiveness of the program. The program activities must be appropriate for the individual consumer. Services which best achieve the desired outcomes are to be given preference for regional center funding.

In this appeal, claimant's mother did not establish with sufficient clarity or specificity what outcomes could be expected from participation in dance therapy and whether dance therapy is the best or most opportune way to achieve those outcomes. The mother contends that dance therapy will aid development of claimant's social-emotional skills, physical gross-motor skills, and sensory modulation and body awareness issues. However, she did not present any evidence, such as a letter from a dance therapist or trained expert, to support her contentions or to refute the Service Agency's argument that dance therapy has not been shown by scientific studies to be an effective treatment modality for children or persons with autism or developmental delays. Without such probative evidence of the expected outcomes from and the nature of dance therapy, claimant's request for this service must be denied at this time.

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Wherefore, the Administrative Law Judge makes the following Order:

ORDER

The appeal or request of claimant Sadaf N. that the Westside Regional Center provide or fund dance or movement therapy must be denied. The decision of the Westside Regional Center to deny dance or movement therapy is therefore upheld.

Dated:

Vincent Nafarrete
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision pursuant to Welfare and Institutions Code Section 4712.5. Both parties are bound by this decision and either party may appeal this decision to a court of competent jurisdiction within ninety (90) days.